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EXAMINER

HARLE, JENNIFER I

ART UNIT PAPER NUMBER

3627

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No. 09/826,197	Applicant(s) WHITE, DANIEL F.	
Examiner Jennifer I. Harle	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Pr i d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,12 and 13 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,12 and 13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 - * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) Interview Summary (PTO-413) Paper No(s). _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claims 1-2 and 12-13 are pending. Claims 3-11 and 14-20 are withdrawn.

Response to Amendment

I. Election/Restriction

The examiner notes Applicant's affirmance of the election to prosecute the invention of Group I, claims 1-2 and 12-13 and the withdraw of claims 3-11 and 14-20.

II. Objections to Drawings

The examiner respectfully disagrees with Applicant's analysis of the drawings and the specification. There is nothing to indicate that the servers must be associated with either the retailers/merchants or the suppliers. They could be associated only with one or neither. Just because the Background indicates that RFID technology and ELP technology is utilized in the present invention with retailers does not so limit it to those computers, RFID/ELP technology can be used in all forms of inventory control. The link was never established in the Specification and no direct sites were pointed out to the examiner. Pg. 4 of the Specification as quoted could easily apply to a manufacturer handling price inquiries from a distributor. Thus, the objection is maintained and made final.

III. Rejection of Claims 1-2 and 12-13 Under 35 U.S.C. § 112 First Paragraph

The examiner argued that the claim(s) contained subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s) at the time the application was filed, has possession of the claimed invention. Applicant's have broken this down into two contentions, the term "time-sensitive item" and, the first and second computers and the web site.

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a. The term “time-sensitive item”

The Applicant asserts that the examiner's arguments that the specification fails to define what a “time-sensitive item” is, that reference to expiration of products combined with a failure to link the expired products as the meaning of time sensitive items and the there is a failure to set forth or establish the intended scope of a time sensitive item are incorrect.

First, Applicant's argue that “time sensitive items” are defined in the specification by stating that it is clear from various portions of the specification that at a minimum, they are date-sensitive merchandise items, typical of those sold by the retailer. Applicant's argue that this support is found in the opening paragraph that states the “invention relates to electronic price label (ELP) systems, and more specifically to a system and method for managing time-sensitive item. The Applicant then talks about products with short shelf lives, which retailers can mark down for quick sales once the expiration date approaches, retailers may mark the items down or let the items expire and dispose of them. Finally, they argue that the Specification talks about combining the communication capabilities of EPL systems with RFID in order to lower prices and identify expired products. These are exactly the examiner's arguments, the specification speaks of expiring products and does not link or limit it to time-sensitive products. Thus, the arguments are not persuasive. The terminology is much broader. Applicant does not even address the scope issue and that is deemed waived.

Applicant attempts to correct the issue by rewording the claim with “date-sensitive merchandise item”. This will be addressed in a new matter issue and raises the same scope

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issues of what exactly is encompassed within a date-sensitive merchandise¹ item. Thus, the rejection is maintained and made final.

b. The First and Second Computers, and the Web Site

Applicant's argue that since the examiner indicates that there is limited disclosure that the expiration information is stored either locally at server 12 or at another server, such as a www server of the seller, who may be a supplier or manufacturer, and who determines the expiration information for its products ... (paraphrase). That this combines with the limitations recited in the Summary are sufficient for one of ordinary skill in the art. Additionally, the Applicant refers back to the objection and arguments made there. The examiner notes that these arguments were not deemed persuasive. The examiner respectfully disagrees with Applicant's analysis. As previously set forth, there is no teaching that the expiration information is ever sent over the internet or www. It may be stored on a server capable of being connected to the internet but the only disclosure ever taught is of the seller defined as being a supplier or manufacturer of who manages the expiration information in connection with the store employee and not separately. Additionally, the inputting of information and report generation is by printer or store employees. See the previous rejection in full. None of the specific arguments were addressed. The addition to the drawings and the Specification include a web site on the web server, however, again the second computer does not have to contact the first computer utilizing the web site address, a

¹ Merchandise is defined as goods and commodities sold at the retail level. Jack P. Friedman, Dictionary of Business Terms, Third Edition, 2000, pg. 423. Goods and Services are defined as products of any economy, where goods are material items. Id. at 292. Thus, Lerner would still encompass date-sensitive items as he teaches commodities subject to spoilage and Ogasawara would still encompass date-sensitive items as he teaches transmission of electronic information which can be stored that has a limited shelf life. The electronic information, which is stored, is equivalent to a newspaper.

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server is a server, is a server and the data could easily have been transmitted via modem and a phone number. Thus the rejection is maintained and made final.

IV. Rejection of Claims 1-2 and 12-13 Under 35 U.S.C. § 112, Second Paragraph

Applicant has amended the term “time-sensitive item” to “date-sensitive merchandise item” on all of the claims. Applicant now contends that this overcomes the 35 U.S.C. § 112, Second Paragraph Rejection. The examiner respectfully disagrees and a new rejection is set forth below. As to the previous rejection of the term “time-sensitive item,” as it has not been argued, any further arguments are not deemed timely, the rejection of this term is maintained and made final.

V. Lexicography

The Examiner concludes that Applicant has decided not to be his own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First as noted in the previous Office Action, the Examiner has carefully reviewed the specification or prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only has Applicant not pointed to definitional statements in his specification or prosecution history, Applicant has also not pointed to a term or terms in a claim with which to draw in those statements.² In Applicant Response dated October 27, 2003, Applicant's allege that the specification defines “time-sensitive” and date-sensitive merchandise”. However, Applicant admits that there is not one particular statement indicating

² “In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, at the very least, point to a term or terms in the claim with which to draw in those statements.” *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

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that time-sensitive items are a particular type of item. (Response, pg 16) Applicant's attempt to argue that by associating passages of the Specification dealing with expiration dates that this equates to the definition of time-sensitive/date-sensitive merchandise, the systems used to equate and narrow the definitions, i.e. EPL systems and RFID are themselves defined relatively and do not necessarily link or limit the definition.³ As the specification failed to teach any definition and Applicant's own response was that the disclosure was at a minimum for any interpretation. Response pg. 16, Second Full paragraph. Respectfully, as set forth above this did not convey any definition to the examiner. Third, after receiving express notice in the previous Office Action of the Examiner's position that lexicography is not invoked, Applicant has not pointed out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 CFR § 1.111(b) (i.e. Applicant has not argued lexicography is invoked). Finally and to be sure of Applicant's intent, the Examiner also notes that Applicant has declined the Examiner's express invitation to be his own lexicographer.⁴ Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process, the presumption in favor of the ordinary and accustomed meaning is maintained. The claims are therefore interpreted with their "broadest reasonable interpretation" *In re Morris*, 127 F.3d

³ EPL systems typically – specification, pg. 1, line 4. EPL associated with – specification, pg. 2, line 15. RFID technology provides an alternative to barcode reader technology for distinguishing and recording items for purchase – no mention of expiration, time sensitivity – specification, pg. 1, lines 17-19. Additional uses are disclosed in 6,019,394 which have nothing to do with time/date-sensitivity, i.e. product care, Fig.3.

⁴ The examiner's requirements on this matter were reasonable on at least two separate and independent grounds. First, the Examiner's requirements were simply an express request for clarification of how Applicant intended his claims to be interpreted so that lexicography (or even an attempt at lexicography) by Applicant was not inadvertently overlooked by the Examiner. Second, the requirements were reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reduction in both pendency and cycle time, and other goals as outlined in the USPTO's The 21st Century Strategic Plan, February 2, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed January 7, 2004).

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1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).⁵ The Examiner now relies heavily on this interpretation.⁶ See e.g. *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1381, 62 USPQ2d 1865, 1877 (Fed. Cir. 2002) (“Because the patentee has not chosen to be his own lexicographer in this instance, [the claimed element] should carry its ordinary meaning”)(Clevenger, J. dissenting in part). Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles apply to all examined claims currently pending.

To the extent that the Examiner’s interpretation are in dispute with Applicant’s Interpretations, the Examiner hereby adopts the following definitions – under the broadest reasonable interpretation standard – in all his claim interpretations.⁷ Moreover, while the following list is provided in accordance with *In re Morris*, the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language.⁸ Finally, the following list is not intended to be exhaustive in any way:

Associated: . . . 4. to bring together or into a relationship in any of various intangible ways . . . Mirriam Webster’s Collegiate Dictionary, Tenth Edition, 1996, pg. 70.

Date: . . . 1 a. : the time at which an event occurs . . . Mirriam Webster’s Collegiate Dictionary, Tenth Edition, 1996, pg. 274.

Sensitive: 3: highly responsive of susceptible: Mirriam Webster’s Collegiate Dictionary, Tenth Edition, 1996, pg. 1066.

⁵ See also MPEP §2111; §2111.01; *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc).

⁶ See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]”

⁷ While most definitions are cited because these terms are found in the claims, the Examiner may have provided additional definition(s) to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

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Merchandise: 2: the commodities or goods that are bought and sold in business: Mirriam Webster's Collegiate Dictionary, Tenth Edition, 1996, pg. 727.

Typically: in typical circumstance, i.e. combining or exhibiting the essential characteristics of a group Mirriam Webster's Collegiate Dictionary, Tenth Edition, 1996, pg. 1279.

Under the broadest reasonable interpretation standard noted above and in accordance with *In re Morris*, the Examiner hereby adopts the following definitions in all his claim interpretations:

The term "date-sensitive merchandise" is defined as highly responsive or susceptible to a time an event occurs involving the commodities or goods that are bought and sold in business. Mirriam Webster's Collegiate Dictionary, Tenth Edition, 1996, pp. 294, 727 and 1066. The examiner further notes that this definition is equivalent to the definition applied to "time-sensitive items" for purposes of claim rejections.

VI. Rejection of Claim 1 and 12 Under 35 U.S.C. § 102(e) and/or § 103(a) by/over Lerner

Applicant asserts that Lerner does not anticipate nor render obvious claims 1 and 12. The examiner is maintaining this rejection in light of Applicant's only amendment to the claims being the change of the phrase "time-sensitive items" to "date-sensitive merchandise items." In light of Applicant's arguments, the rejects set forth below, and the definition put forth above, there is no material difference in the definition of the two terms.

⁸ See e.g. *Brookhill-Wilk 1 LLC v. Intuitive Surgical Inc.*, 334 F.3d 1294, 1300, 67 USPQ2d 1132, 1137 (Fed Cir. 2003) (abstract dictionary definitions are not alone determinative; "resort must always be made to the surrounding text of the claims in question").

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a. § 102 (e)

Applicant argues that because the examiner admits that Lerner does not explicitly disclose that commodities, such as coffee, sugar, cocoa and cotton, or that offer in such a system are “time-sensitive,” Lerner does not teach every limitation of claims 1 and 12 and therefore can not anticipate those claims under 102.

First the examiner notes that Applicant fails to address the fact that the examiner explicitly set forth that rationale that implicit/inherent to Lerner is the fact that that time-sensitive items were in fact taught in Lerner because they are subject to a time restriction, i.e. the commodity is subject to spoilage and the offer is of limited duration. The same rationale holds true for date-sensitive merchandise items. See the rationale as set forth below.

The examiner respectfully disagrees. Lerner teaches that the commodities being brokered are taught as being physical commodities, specifically sugar coffee, cocoa and cotton, i.e. agricultural commodities [0002], [0062]. He further teaches that the system provides both front and back office operations tailored to members’ specific risk-management and end-to-end contract execution needs, including access to shipping related services such as freight brokerages, direct booking for liner transport, load and discharge supervision, and laboratory testing. It is inherent/implicit that Lerner’s commodities are “time-sensitive items”/ “date-sensitive merchandise items” because they are subject to spoilage/perishable, i.e. meeting the definition of date-sensitive merchandise items, as they are highly sensitive to a time an event, i.e. the spoilage or perishability of the commodity, sold in commerce will occur. Also perishable is the equivalent to expirable the same word utilized by Applicant to define “date-sensitive merchandise item” in his response. This is supported by Friend, et al. (2001/0032165 A1) who

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teaches a method and apparatus for agricultural commodities trading utilizing internet connectivity (Abstract ; [0002], [0003]). Friend further teaches that many offers, i.e. commodity offers, are time-sensitive, particularly for agricultural producers because they involve perishability considerations ([0085]-[0088]). Selleck (2001/0049651 A1) who teaches commodity trading and spoilage of agricultural products (Abstract; [0103]), Adam, et al. who teaches that trading agricultural commodities involves perishable goods and that it is well known in the art that when executing these trades that one must take into account the shipping costs and environment conditioning costs, etc. (Abstract, [0002], [0009], [0063]-0065).

Finally, Even assuming arguendo that the examiner accepted such a limited proffered definition existed, the examiner respectfully disagrees with this analysis. Agricultural commodities once obtained can be sold by a broker-dealer to a consumer. However, the claim does not read that the information has to be obtained in that specific light. The claim merely reads a method of obtaining information about a date-sensitive merchandise item comprising:

Identifying the date-sensitive merchandise item; and

Obtaining the information from a web site.

As all agricultural commodities have the potential to be resold by a broker/dealer to an individual consumer, they are by definition date-sensitive merchandise items. Thus, Lerner would still read on the claim as set forth. Additionally, the agricultural commodity is being traded through a trading market place, i.e. the first computer, which could be equated with the retailer, and the trader, the second computer, and thus the definition would be met that way, as well.

Thus, Applicant's argument is not deemed persuasive and the rejection of claims 1 and 12 are maintained and made final.

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b. § 103 (a)

See the 102(e) arguments above incorporated by reference. Applicant now argues that Lerner does not teach or make obvious a method for obtaining information regarding “date-sensitive merchandise items” because Lerner teaches a system and method for commodities trading. Applicant states that commodities trading and date sensitive merchandise items are completely different because commodities can not be considered “date sensitive” in the sense of expiration dates as set forth in the present invention. Even assuming arguendo that the examiner accepted such a limited proffered definition existed, the examiner respectfully disagrees with this analysis. Agricultural commodities once obtained can be sold by a broker-dealer to a consumer. However, the claim does not read that the information has to be obtained in that specific light. The claim merely reads a method of obtaining information about a date-sensitive merchandise item comprising:

Identifying the date-sensitive merchandise item; and

Obtaining the information from a web site.

As all agricultural commodities have the potential to be resold by a broker/dealer to an individual consumer, they are by definition date-sensitive merchandise items. Thus, Lerner would still read on the claim as set forth. Additionally, the agricultural commodity is being traded through a trading market place, i.e. the first computer, which could be equated with the retailer, and the trader, the second computer, and thus the definition would be met that way, as well.

Thus, Applicant’s argument is not deemed persuasive and the rejections of claims 1 and 12 are maintained and made final.

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VII. Rejection of Claims 1, 2, and 12 Under 35 U.S.C. § 102(e) and/or § 103(a) by/over Ogasawara

Applicant asserts that Lerner does not anticipate nor render obvious claims 1 and 12. The examiner is maintaining this rejection in light of Applicant's only amendment to the claims being the change of the phrase "time-sensitive items" to "date-sensitive merchandise items." In light of Applicant's arguments, the rejects set forth below, and the definition put forth above, there is no material difference in the definition of the two terms.

a. § 102 (e)

Applicant argues that because the examiner admits that Ogasawara does not explicitly disclose that product items with a shelf-life, i.e. an expiration date are "time-sensitive," Ogasawara does not teach every limitation of claims 1, 2 and 12 and therefore can not anticipate those claims under 102.

First the examiner notes that Applicant fails to address the fact that the examiner explicitly set forth that rationale that implicit/inherent to Ogasawara is the fact that time-sensitive items were in fact taught in Ogasawara because they are subject to a time restriction, i.e. the product items purchased by a consumer have a shelf-life limitation made available to the purchaser, i.e. an expiration date, a time-restriction of limited duration. The same rationale holds true for date-sensitive merchandise items. See the rationale as set forth below.

The examiner respectfully disagrees. Ogasawara teaches that the physical products are merchandise purchased from a retailer and have expiration dates provided to the consumer by the retailer. This explicitly meets Applicant's own definition of a "date-sensitive merchandise item" as argued by Applicant in the 103 under Lerner, pg. 22 of the Response, and is "typical of

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those sold by a merchadiser retailer,” “products such as produce items, baker items and dairy products have short shelf lives,” as taught by Osagawaracols. 2-3, lines 66-10 which discusses the goods sold to the consumer such as grocery items and their shelf life. It is inherent/implicit that Osagawara’s products are “time-sensitive items”/ “date-sensitive merchandise items” because they are subject to an expiration data and are the same type of goods, i.e. meet Applicant’s own definition of date-sensitive merchandise items

Applicant further argues that Osagawara fails to teach obtaining the information from a web site, stating the examiner indicates that it is inherent. This is a mischaracterization of the examiner’s statement of the teaching. The examiner specifically cited to a portion of Osagawara’s Specification that taught obtaining the information from a web site at col. 4, lines 25-39. Applicant admits that Ogasawara teaches that web enabled home terminal or computer may be used to access the expiration information that he argues is maintained on Ogaswara’s system not on a web server. The examiner directs Applicant’s attention to the teaching that the information is located in a file or memory storage area of the retail facility’s web server and that the customer obtains the information by accessing each retail facility’s server through the customer’s Internet connection. Thus, the information is obtained from a second web site, per claim 1, the expiration information is obtained from a seller of the time-sensitive information, per claim 2, and a first computer (the retail facilities web server) which has a web site address (has a web site therefor has a url) and which store the information about the date-sensitive merchandise item (electronic receipts containing the information are stored on the server), per claim 12.

Thus, Applicant's arguments are not deemed persuasive and the rejections of claims 1, 2, and 12 are maintained and made final.

b. § 103 (a)

See the 102(e) arguments above incorporated by reference. Applicant now argues that the information obtained from the Osagawara web site does not obtain the date-sensitive merchandise information in the manner as recited in the claims. The examiner respectfully disagrees, however, as no explicit manner is recited in the claims. The date-sensitive merchandise item is identified (the consumer has his purchases/ the second computer also identifies the data-sensitive merchandise item by electronic receipt first and then more specifically after the download from the first computer) and information is obtained from a web site/first computer (the electronic receipt). The fact that additional steps or further processing is required is irrelevant as the claims are not explicit and consist of comprising language. Moreover, Osagawara provides for the home terminal to process the information obtained from the web site to obtain a particular date-sensitive merchandise item from information that was obtained from the web site (see cols. 4-8).

Thus, Applicant's arguments are not deemed persuasive and the rejections of claims 1, 2, and 12 are maintained and made final.

VIII. Rejection of Claims 1, 12 and 13 Under 35 U.S.C. § 102(e) and/or § 103(a) by/over Mankes

Applicant asserts that Mankes does not anticipate nor render obvious claims 1, 12 and 13. The examiner is maintaining this rejection in light of Applicant's only amendment to the claims being the change of the phrase "time-sensitive items" to "date-sensitive merchandise items." In

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light of Applicant's arguments, the rejections set forth below, and the definition put forth above, there is no material difference in the definition of the two terms.

a. § 102 (e)

First the examiner notes that Applicant fails to address the fact that the examiner explicitly set forth that rationale that implicit/inherent to Mankes is the fact that that time-sensitive items were in fact taught in Mankes because they are subject to a time restriction, i.e. the hotel rooms are subject to a time constraint, i.e. either in the rate or availability and if not rented are subject to spoilage. The same rationale holds true for date-sensitive merchandise items. See the rationale as set forth below.

Applicant argues that Mankes does not teach obtaining information regarding a date-sensitive merchandise item from a web site after identifying a date-sensitive item. The examiner respectfully disagrees. Mankes teaches that the hotel/motel rooms are reserved by a consumer through the following process after the consumer logs onto an active reservation server through a web page, the consumer picks from a list of available inventory types based upon consumer's criteria (as it is a hotel/motel room, it is inherent/implicit that the criteria include dates, see e.g. Travelocity.com, Priceline.com, Expedia.com, or any hotel/motel web site – all require some designation of identifying the date-sensitive merchandise item), makes a specific request based on available data and books the room (cols. 7-8, lines 47-23). By applicant's own definition the hotel/motel rooms are "time-sensitive items"/ "date-sensitive merchandise items" because they are typically sold by a merchandise retailer and is a non-food item also having short spans for selling and it meets the definition set forth above, i.e. meeting the definition of date-sensitive merchandise items, as they are highly sensitive to a time an event, i.e. the spoilage or

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perishability of the hotel/motel room, sold in commerce will occur. Also perishable is the equivalent to expirable the same word utilized by Applicant to define "date-sensitive merchandise item" in his response.

Thus, Applicant's argument is not deemed persuasive and the rejection of claims 1, 12 and 13 are maintained and made final.

b. § 103 (a)

See the 102(e) arguments above incorporated by reference. Applicant now argues that since Mankes teaches a system that utilizes a web site for maintenance of a stand alone inventory control system for an active reservation system that the examiner leaps to the conclusion that it would have been obvious to maintain expiration dates (information) on a web site so as to be able to obtain the information for the web site in response to the identification of a date sensitive merchandise item. Applicant chooses to ignore the teachings of Mankes that the systems inventories are kept up to date with each other as previously set forth, i.e. removal, discounts, bookings, etc. Additionally, Mankes teaches that system and the local inventory permits the owner to control all conflicts and that if the internet system goes down the stand alone system permits the owner to continue to take reservations according to his business practice (cols. 7-8). Further Mankes teaches that there are problems with the current systems combined central and local inventory systems that results in lost sales of rooms (col. 1). All of these items buttress the examiner's 103 that it would have been obvious to a person of ordinary skill in the art at the time of the invention that hotel and motel rooms as disclosed by Mankes are data-sensitive merchandise items because they are clearly typical products sold by a merchandise retailer, non-food items that can have short spans for selling, and once the expiration/spoilage approaches

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retailers may mark down items for quick sale or let the rooms go empty and thus dispose of them. See entire Mankes Patent.

Thus, Applicant's argument is not deemed persuasive and the rejections of claims 1, 12 and 13 are maintained and made final.

Drawings

The drawings were received on October 27, 2003. These drawings are acceptable.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1, 2, 12, and 13 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 2, 12, and 13 cite a date-sensitive merchandise item, however, the specification does not even mention the term date-sensitive merchandise item. Reference is made to expiration of products but no link is made between them, managing time-sensitive items, products with short shelf lives, non-food items that also have short selling spans and retailers may mark down items for quick sale or let items expire and dispose of them (Specification, pg. 1). Other pages of the Specification disclose EPLs with RFIDs to lower prices and identify expired products. Date-sensitive merchandise items are thus considered new matter.

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Applicant claims a first computer (associated with a supplier) which has a web site address and which stores the information about the time-sensitive item; and a second computer (associated with a retailer) which identifies the time-sensitive item and which contacts the first computer to obtain the information. This is disclosed in the Summary of the Invention with the exception of a second computer associated with a retailer. However, there is nothing in the Detailed Description, which discloses any method of obtaining date-sensitive-merchandise items from web site. There is a limited disclosure that expiration information is stored either locally at server 12, or at another server, such as a World Wide Web (Web) server 16 of the seller, who may be a supplier or manufacturer, and who determines the expiration information for its products and the explanation goes on to inputting of the information and report generation by printer or display by store employees. The two servers are disclosed as alternatives. It is also disclosed that the ELP computer and the server can be one computer. If so then the ELP would either not have an internet connection or feed directly to the World Wide Web server and there would be no need to go to the internet web site because you would already be directly connected. There is no disclosure of any automatic direct or redirect to a url or web site address. The examiner can find no disclosure of separate computers for suppliers and retailers. The seller is defined as being a supplier or manufacturer who manages the expiration information but every time he is discussed in the Detailed Description it is in connection with the store employee not as a separate supplier or manufacturer. The lack of any drawings illustrating these embodiments reinforces the examiner's analyses. Everything speaks specifically of time-sensitive items and expiration dates.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "date-sensitive merchandise" in claims 1, 2, 12, and 13 is a relative term, which renders the claim indefinite. The term "date-sensitive merchandise" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. "Date-sensitive merchandise" is relative to the situation, environment and even the expertise/technology. For example, the same item could be have several "date-sensitivities". Black's Law Dictionary could be "date-sensitive" in that a student needs it for a particular class, a book store needs it for restocking, an edition is outdated due to changes in meanings, and even the book itself has become brittle and needs to be replaced. A rental property could be considered "date-sensitive" for vacancy/rental purposes, for cleaning/preparing for a new tenant purposes, and for sale purposes. The same could be said for pharmaceuticals, "date-sensitivity" could apply in a variety of situations, such as, recalls, removal of expired medications, notification of improper fulfillment, warnings about potential new side effects, class action lawsuits, and notification of fulfillment. All of the examples have different criticality, date-frames and meanings contained within the phrase "date-sensitive" rendering it indefinite to the point where one of ordinary skill in the art would not be apprised of the scope of the invention as pertains to the claims.

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Thus, for examination purposes this phrase is being interpreted in its broadest scope to refer to any time constraint, control or restriction.

Claim Rejections - 35 USC § 102

See above under Response. The rejections have all been maintained and made final.

Claim Rejections - 35 USC § 103

See above under Response. The rejections have all been maintained and made final.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

If a copy of a provisional application listed on the bottom portion of the accompanying Notice of References Cited (PTO-892) form is not included with this Office action and the PTO-892 has been annotated to indicate that the copy was not readily available, it is because the copy could not be readily obtained when the Office action was mailed. Should applicant desire a copy

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of such a provisional application, applicant should promptly request the copy from the Office of Public Records (OPR) in accordance with 37 CFR 1.14(a)(1)(iv), paying the required fee under 37 CFR 1.19(b)(1). If a copy is ordered from OPR, the shortened statutory period for reply to this Office action will not be reset under MPEP § 710.06 unless applicant can demonstrate a substantial delay by the Office in fulfilling the order for the copy of the provisional application. Where the applicant has been notified on the PTO-892 that a copy of the provisional application is not readily available, the provision of MPEP § 707.05(a) that a copy of the cited reference will be automatically furnished without charge does not apply.

In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, and because "the continual, chief complaint of inventors and their lawyers: that patent examiners are abysmal communicators, both orally and in writing,"⁹ the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicant(s) with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicant(s) disagree with *any* factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹⁰ the Examiner respectfully requests Applicant(s) *in their next response* to expressly traverse the Examiner's position and provide appropriate arguments in support thereof. Failure by Applicant(s) *in their next response* to traverse the Examiner's positions and provide appropriate arguments in support thereof will be considered an admission by Applicant(s) of the

⁹ Sabra Chartrand, *A Bid to Overcome Patent Backlogs*, 152 N.Y. Times C2 (Sept. 23, 2002).

¹⁰ E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.

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factual determinations and legal conclusion not expressly traversed.¹¹ By addressing these issues now, matters where the Examiner and Applicant(s) agree can be eliminated allowing the Examiner and Applicant(s) to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer I. Harle whose telephone number is 703.306.2906. The examiner can normally be reached on Monday through Thursday, 6:30 am to 5:00 pm,.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703.308.5183. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

Jennifer Ione Harle
January 8, 2004


Richard Chilcot
Supervisory Patent Examiner
Technology Center 2659
3627

¹¹ See also MPEP §714.02, 37 CFR §1.111(b), and 37 CFR §1.104(c)(3).